IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

No. 83-1077

DENNIS PARTEE,
Petitioner,

v.

SAN DIEGO CHARGERS FOOTBALL COMPANY,
Respondent.

On Petition for Writ of Certiorari to the Supreme Court of the State of California

BRIEF FOR RESPONDENT IN OPPOSITION

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Question Presented

Whether the Supreme Court of California erred in deciding that the burden threatened to be imposed on interstate commerce by applying California's antitrust statute to rules of governance of the National Football League regarding player recruitment outweighs California's interest in applying its antitrust statute to those rules?

STATEMENT

Dennis Partee, the petitioner, was employed as a professional football player by the San Diego Chargers Football Company, the respondent, from 1968 through 1976. In 1976 petitioner sued respondent for damages, claiming that respondent had violated California's antitrust statute, California Business and Professions Code, §16700 *et seq.* (the Cartwright Act). According to petitioner, respondent violated California antitrust law by complying with five separate rules of governance of members of the National Football League (hereinafter referred

to as the "NFL"). Although petitioner did not formally name the National Football League as a defendant, the essence of petitioner's claim is that the NFL rules themselves offend California's statute and that respondent is required by California law to disregard the league rules, whatever the consequences for all members of the league.

Petitioner was drafted by respondent in 1968. Petitioner played his third season with respondent, 1970, pursuant to the option clause of his 1969 contract, because petitioner had not signed a new contract. In July 1971, petitioner signed a retroactive contract for the 1970 season, and also signed a series of three one-year contracts with respondent for the three succeeding years (1971-1973). (R.T. III:46-67.)*

In 1974, NFL teams became involved in a bidding war for active players with the newly-created World Football League (hereinafter referred to as the "WFL"). (R.T. IV:455-456, IX:1256-1257.) Petitioner received an offer from a WFL team, the Philadelphia Bell, to play in the WFL for $50,000 for the 1974 season. (R.T. IV:449, IX:1259, XI:12.) Respondent's ownership told its top management to do whatever was necessary to retain its players, and specifically named petitioner as a player who should not be lost to the WFL. (R.T. VIII:32.) As a result of negotiations between respondent and petitioner's agent (who had been told by petitioner that petitioner wanted to stay in San Diego "at almost any cost"), petitioner signed three additional one-year contracts, for the 1974, 1975 and 1976 seasons, for total compensation of $132,000. This amount was $4,000 to $7,000 more than petitioner's initial demand, although not guaranteed in the event that petitioner was unable to make the team in future years. (R.T. XI:14, 18-19, 22-24.)

Petitioner filed suit against respondent in 1976, alleging, *inter alia,* that in 1974, when he negotiated his three one-year employment contracts with respondent, his business or property interests were damaged by certain NFL rules and practices, in violation of the Cartwright Act. Accordingly, petitioner

* References are to the Reporter's Transcript.

claimed that the Cartwright Act made it unlawful for respondent to comply with certain rules of governance of the NFL.

The first of the NFL rules challenged by petitioner is the college draft, the procedure whereby each NFL member is allocated the initial right to negotiate exclusively with designated football players from each year's college senior class. Each NFL member is permitted to choose from the college seniors in the inverse order of that member's win/loss standing at the end of the preceding football season. (R.T. VII:954.)

The second NFL rule challenged by petitioner is the option clause, a negotiable provision in the NFL Standard Player Contract. In 1974, the option clause provided the employer the right to renew the player's contract for a further period of one year (at no less than 90% of the player's last year's salary), in the event the employer and the player were unable to agree on a contract for a further period. (R.T. III:64, VI:889-891, VII:914.)

The third challenged rule is the so-called Rozelle Rule, which required each NFL member to adhere to a determination by the NFL Commissioner (then, as now, Pete Rozelle) regarding the compensation to be given to one NFL team when a second NFL team contracts with a player who was formerly under contract with the first team, in those instances where the two teams cannot agree on such compensation. (R.T. III:72, VII:964-965.)

Petitioner also challenged the no tampering rule, which prohibits one NFL member from negotiating with a player while that player is under contract with another NFL member. (R.T. VII:963.)

Petitioner also sought to challenge a so-called "one-man rule," even though no such rule exists. "One-man rule" was a pejorative term that originated in the case of *Kapp* v. *NFL*, 586 F.2d 644 (9th Cir. 1978), *cert. denied*, 441 U.S. 907 (1979), and the term is limited to *Kapp*, where the NFL Commissioner had exercised the authority (which was specifically accorded to him by an operative collective bargaining agreement) to re-

quire a player to adhere to collectively-bargained terms of his employment with a league member.

After a non-jury trial, the trial court held that the Rozelle Rule, the draft, the no tampering rule, and the so-called "one-man rule," but not the option clause, violated the Cartwright Act. (Petitioner's Appendix 3, p. 66.)

The California Court of Appeal reversed the trial court's judgment, holding that the application of California antitrust law to the NFL player-recruitment rules challenged by petitioner would so burden interstate commerce as to violate the Commerce Clause of the Constitution of the United States. (Pet. App. 2, p. 48.)

The Supreme Court of California agreed with the decision by the Court of Appeal, and likewise reversed the trial court's antitrust decision in petitioner's favor (Pet. App. 1, p. 1.) The California Supreme Court based its decision on the principle that a sports league (such as the NFL) requires uniform rules applicable to all its members if there is to be a fair opportunity for competitive parity, and in the case of a league having members in several states (such as the NFL), uniformity is impossible if each state can alter the rules as it chooses for those members of the league based within its borders. See, R.T. XII:151-154, 163-164. Thus, the court reasoned, to apply California's antitrust statute so as to prevent California-based teams from complying with NFL rules of general nationwide applicability would place a burden on interstate commerce in the professional league football business that outweighed California's interest in applying its antitrust statute to the league rules in question. (Pet. App. 1, p. 7.) Petitioner seeks review of that decision.

SUMMARY OF ARGUMENT

This Court should not grant certiorari because there is no conflict among the Circuits or among the state courts as to the issue before the Court, and because the California Supreme Court correctly decided that this Court's decision in *Flood* v. *Kuhn*, 407 U.S. 258 (1972), prohibits the application of state antitrust law to the activities of multi-state professional sports leagues.

ARGUMENT

1. No Conflict Exists Among the Circuits or Among State Courts

No conflict exists among the courts as to the inapplicability of state antitrust law to the interstate operations of professional sports leagues. As the two California appellate decisions in this case make clear, petitioner has not been able to point to any case, State or Federal, upholding the applicability of State antitrust law to sports league employment issues or to any other aspect of the interstate operations of sports leagues. Those decisions holding that state antitrust laws do not apply to the employment rules of multi-state professional sports leagues include *State* v. *Milwaukee Braves, Inc.* 31 Wis. 2d 699, 731, 144 N.W. 2d 1, *cert. denied,* 385 U.S. 990 (1966) (State antitrust regulation of baseball prohibited); *Matuszak* v. *Houston Oilers,* 515 S.W. 2d 725 (Tex. Civ. App. 1974) (Under *Flood* v. *Kuhn,* state antitrust laws not applicable to the interstate rules and practices of the NFL); *Robertson* v. *National Basketball Association,* 389 F. Supp. 867, 880-881 (S.D.N.Y. 1975) (Under *Flood* v. *Kuhn,* state antitrust laws not applicable to reserve system, uniform player contract, or draft of the National Basketball Association); *HMC Management Corp.* v. *New Orleans Basketball Club,* 375 So. 2d 700 (La. Ct. App. 1979), *cert. denied,* 379 So. 2d 11 (La. 1980) (Under *Flood* v. *Kuhn,* state antitrust laws not applicable to employment practices of the National Basketball Association).

2. The Decision of the California Supreme Court Is Correct

a. The Flood v. Kuhn Test For Determining When State Antitrust Law Would Burden Interstate Commerce Is Not Limited To Baseball Leagues.

The business of multi-state professional league football is interstate commerce (*Radovich* v. *NFL,* 352 U.S. 445 (1957)), and petitioner does not argue that the record shows any difference in the rules of governance for player recruitment, as between football leagues and baseball leagues, that requires that multi-state football leagues and multi-state baseball

leagues be distinguished for purposes of interstate commerce. In short, nothing in the facts of commercial life support a distinction in the Constitutional treatment of professional league baseball and professional league football. Rather, petitioner suggests that the two sectors of commerce should be treated differently under the Constitution solely because, by reason of *Federal Baseball Club* v. *National League*, 259 U.S. 200 (1922), *Toolson* v. *New York Yankees, Inc.*, 346 U.S. 356 (1953), and *Flood* v. *Kuhn*, only one of them—professional league baseball—is outside the reach of the Sherman Act.

There is no merit to this argument. In the first place, the reason that the Sherman Act does not reach baseball is not because baseball is outside the reach of the Commerce Clause. In *Flood* v. *Kuhn* this Court stated, "Professional baseball is a business and it is engaged in interstate commerce." 407 U.S. at 282. Rather, the non-application of the Sherman Act to baseball derives from the unique legal history of baseball described in *Flood* v. *Kuhn*. 407 U.S. 269-282. In the second place, the reason to protect interstate commerce from disruptive state antitrust law sanction is the same for baseball and football leagues. In each case the league cannot survive if some members are restrained from competing on an equal footing with other members in the recruitment of players. The college draft of the National Football League is a good example. If the San Diego Chargers were legally required (as a result of a Cartwright Act ruling such as the trial court decision in this case) to recruit players without going through the NFL college draft, but other NFL members were bound by the results of the NFL college draft, these other clubs would be seriously disadvantaged. Ultimately, the NFL would be forced to restore parity of opportunity by abolishing the draft altogether.

If that occurred in the case of a league in which all the teams were domiciled and played only in California, it would be hard to find an undue burden on commerce among the several states. But that is not the case here, anymore than it was in *Flood* v. *Kuhn*. In the instant case, at the time of petitioner's suit the league had members domiciled in 18 states and the

District of Columbia. If California could prevent NFL clubs domiciled in that state from adhering to the recruiting restrictions imposed by the NFL college draft, California would have forced a nationwide interstate enterprise to be conducted everywhere the way California wants it conducted, and would have invited the adoption of preferential laws in other states.

Such a drastic effect on interstate commerce, in the judgment of the California Supreme Court, would be out of proportion to any resulting benefit to California, and therefore would unduly burden commerce among the several states. That decision is consistent with the teaching of *Boston Stock Exchange* v. *State Tax Comm'n,* 429 U.S. 318, 329 (1977), i.e.,

> Permitting the individual States to enact laws that favor local enterprises at the expense of out-of-state businesses "would invite a multiplication of preferential trade areas destructive" of the free trade which the [Commerce] Clause protects. Dean Milk Co. v. Madison, 340 US 349, 356, 95 L Ed 329, 71 S Ct 295 (1951).

Also, the California Supreme Court's decision is on all fours with one of the holdings in *Flood* v. *Kuhn,* 407 U.S. 258 (1972). In *Flood* v. *Kuhn,* after declining to overturn earlier decisions holding that the Sherman Act did not reach professional baseball leagues, this Court further held that it would unduly burden interstate commerce to subject the player-relations rules of multi-state professional baseball leagues to state antitrust law. *Flood* v. *Kuhn,* 407 U.S. at 284-285. Adopting language from the Second Circuit Court of Appeals, this Court clearly enunciated a ruling of Constitutional law that governs this case, as follows: " '[A]s the burden on interstate commerce outweighs the states' interests in regulating baseball's reserve system, the Commerce Clause precludes the application here of state antitrust law.' " *Flood* v. *Kuhn,* 407 U.S. at 284.

Despite this clear ruling, petitioner argues that state law was not set aside in *Flood* v. *Kuhn* on Commerce Clause-burden

grounds, but on "preemption" grounds. Preemption describes the operation of the Supremacy Clause of the Constitution: The "Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. art. VI. In *Flood* v. *Kuhn*, this Court mentioned no Constitutional provision, no federal law and no treaty with which anything in state antitrust law conflicted, and the petitioner here does not argue that the Court in *Flood* v. *Kuhn* had any particular Constitutional clause, federal statute or treaty in mind. Rather, the petition suggests that the Court held state law preempted by a "judicially created" exemption from federal antitrust law. (Pet. at 14.) Before *Flood* v. *Kuhn*, this Court had not equated judicial decisions with Constitutional clauses, statutes or treaties for purposes of the Supremacy Clause, and petitioner does not suggest any reason why this Court would establish a new and far-reaching principle of Constitutional law in *Flood* v. *Kuhn* without even one word of explanation. In short, the argument that *Flood* v. *Kuhn* is a preemption case confined to baseball is absurd.

b. The Record Supports The California Supreme Court's Conclusion That Requiring Compliance With California's Antitrust Law Would Unduly Burden Interstate Commerce.

The petition asserts that the California Supreme Court based its decision on a "hypothetical burden" on interstate commerce. (Pet. at 14.) Petitioner is correct; there has been no actual burden on interstate commerce from the application of California antitrust law to respondent's conduct because the California Supreme Court, by its decision below, prevented California's Cartwright Act from having that effect. However, that fact does not aid petitioner. Courts do not have to wait for the burden to be inflicted. The "validity of state laws must be judged chiefly in terms of their probable effects." *Lewis* v. *BT Investment Managers, Inc.*, 447 U.S. 27, 37 (1980).

Moreover, the California Supreme Court's "hypothesis" as to burden on commerce is supported by the record, because each NFL member, wherever located, is obliged as a condition of league membership to adhere to the league's rules. NFL members are domiciled and conduct business in many different states, but the league's player-recruitment rules apply to all members, wherever located, to insure parity of competitive opportunity, and non-compliance with the rules by any member would competitively disadvantage all members in player recruitment, thereby requiring the league to restructure its business nationwide to suit the ends of a single state's antitrust law. (R.T. XII: 151-154; 163-164.) Just as in *Flood* v. *Kuhn*, the court below properly concluded that imposition by California of such a burden on interstate commerce violated the Commerce Clause.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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